



Florida Department of Environmental Protection

Southwest District Office
13051 North Telecom Parkway, Suite 101
Temple Terrace, FL 33637-0926

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

May 4, 2018

Megan E. Ross, P.E., ENV SP
Interim Utilities Director
Pinellas County Utilities
6730 142nd Ave. North
Largo, FL 33771
mross@pinellascounty.org

Re: Executed Consent Order OGC File No. 18-0112
Pinellas county Utilities
Facility ID Numbers FL0040436 and FL0128775
Pinellas County

Dear Ms. Ross:

Enclosed please find the executed Consent Order OGC No. 18-0112, regarding the above referenced facility. The effective date of the Consent Order is the filing date entered by the designated Department Clerk on the signature page.

For inquiries, you may contact Michelle Holton at 813-470-5900, or by email at Michelle.Holton@Floridadep.gov

Sincerely,

Kelley M. Bootwright for:

Mary E. Yeargan, PG
Southwest District Director
Florida Department of Environmental Protection

MEY/

Enclosure

cc: Ms. Lea Crandall, FDEP/OGC, lea.crandall@FloridaDEP.gov

Pinellas County Utilities

Executed Consent Order OGC File No. 18-0112

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Michelle Holton, FDEP, michelle.holton@FloridaDEP.gov

Leandro Garcia, FDEP, Leandro.garcia@FloridaDEP.gov

Adrienne Pennington, FDEP, adrienne.pennington@FloridaDEP.gov

SWD_clerical@FloridaDEP.gov

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHWEST DISTRICT
)	
v.)	OGC FILE NO. 18-0112
)	
PINELLAS COUNTY UTILITIES)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and Pinellas County Utilities (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds, and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a person within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of two wastewater treatment facilities (Facilities); South Cross Bayou Advanced Water Reclamation Facility (AWRF) - FL0040436 and William E. Dunn Water Reclamation Facility (WRF) - FL0128775, and associated Collection Systems (Systems) located in Pinellas County.

4. On September 11, 2017, Hurricane Irma impacted the State of Florida. On and around that date, Respondent reported 26 sanitary sewer overflows due to area-wide power outages. As a result of this impact, approximately 218 of the pump stations were left without electricity. Of these, 26 pump stations reported sanitary sewer overflows (SSO's), 15 of which were in the South Cross Bayou AWRF service area and 11 were in the William E. Dunn service area. Although the total volume tankered to prevent additional SSO's was 4,939,400 gallons, this power loss resulted in approximately 1,307,080 gallons discharged, some into various waters of the state. The date, location and volume of the overflows as well as the impacted water bodies are shown in Table 1 below.

Table 1- Sewer Overflows and Spills – Pinellas County Utilities

Item No.	Incident Date	State Watch Office Incident Number/Incident Location	Volume Spilled (gallons)	Impacted Water Body
1	9/11/17	2017-7201	7,875	Smith Creek
2	9/11/17	2017-7203	7,320	Lake Seminole Bypass Canal
3	9/11/17	2017-7214	76,395	Storm Drain to wetland
4	9/11/17	2017-7215	33,817	wetland area
5	9/11/17	2017-7216	63,341	Retention Pond
6	9/11/17	2017-7250	259,725	Intracoastal Waterway
7	9/11/17	2017-7770	34,921	Retention Pond
8	9/11/17	2017-7771	29,755	Lake Seminole
9	9/11/17	2017-7772	3,042	Intracoastal Waterway
10	9/12/17	2017-7773	31,996	Retention Pond
11	9/11/17	2017-7774	11,668	Bear Creek
12	9/12/17	2017-7775	1,468	Long Bayou
13	9/11/17	2017-7776	38,605	McKay Creek
14	9/12/17	2017-7777	16,136	Intracoastal Waterway
15	9/12/17	2017-7778	5,973	Intracoastal Waterway
16	9/11/17	2017-7779	10,004	Lake Tarpon
17	9/12/17	2017-7780	6,206	Retention Pond
18	9/11/17	2017-7781	11,779	McKay Creek/Intracoastal Waterway
19	9/11/17	2017-7783	13,747	Soaked into ground
20	9/12/17	2017-7784	2,068	Klosterman Bayou
21	9/11/17	2017-7785	39,152	Retention Pond
22	9/11/17	2017-7787	457,585	McKay Creek
23	9/12/17	2017-7788	6,966	Lake Tarpon
24	9/17/17	2017-7859	11,500	Retention Pond
25	9/11/17	2017-8202	125,268	McKay Creek/Retention Pond
26	9/12/17	20 South Pine Circle, Belleair	800	Intracoastal Waterway

5. The Department finds that each of the discharges listed in Table 1 is a violation of Rule 62-604.130(1), F.A.C., which prohibits the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment approved by the Department. The Department further finds that each discharge is also a violation of Section 403.161(1)(a), F.S., which states that it is a violation to cause pollution so as to harm or injure human health or welfare, animal, plant, or aquatic life or property

6. Prior to and in response to the overflows in Table 1, the Respondent implemented and updated the County's Hurricane Action Plan. This Action Plan includes annual disaster planning and

implementation, updating emergency contact information, preparing generators and facilities for future storm events, and fostering communication efforts between the County and other entities. The County has also proactively implemented an Inflow and Infiltration (I & I) Study to evaluate and reduce I & I in the County owned sanitary sewer system. In response to the study, the County implemented a Flow Metering Program to identify specific problematic I & I areas, then once identified, the County has and will continue to generate Capital Improvement Projects (CIP) to correct the issues.

7. Respondent has determined that the overflows were a result of power outages.

8. Respondent applied hydrated lime to land areas that were impacted by the spills, conducted water quality sampling of surface water bodies affected, and placed public notice signs near affected spills area when appropriate to alert the community of the overflow.

9. As a preventative measure, the County tankered a total volume of 4,939,400 gallons of wastewater to prevent additional SSOs.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

10. By May 31, 2019, Respondent shall update and submit to the Department for approval its Capacity, Management, Operation, and Maintenance (CMOM) Plan for its Facilities and Systems. This shall be done in accordance with USEPA document 305-B-05-002, dated January 2005, and shall contain the updated Sanitary Sewer Overflow Response Plan, which contains detailed provisions for environmental monitoring, reporting, and public notification. In the event the Department deems the CMOM insufficient, the Department may notify the Respondent in writing of the deficiencies and request additional information (RAI). The Respondent shall submit the required information identified in the RAI within the timeframe provided for in the RAI.

11. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$5,750.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$5,250.00 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalties are apportioned as follows: \$5,250.00 for multi-day violations of Rule 62-604.130(1), F.A.C. for the Respondent's two Facilities and associated Systems. This amount reflects a 25% reduction in assessed penalties due to the good faith effort by the Respondent.

12. In lieu of making cash payment of \$5,250.00 in civil penalties as set forth in paragraph 11 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$7,875.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election either by email or certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order. If Respondent elects to implement an in-kind project, then Respondent shall comply with all of the requirements and time frames in Exhibit 1 entitled In-Kind Projects.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with the requirements of paragraph 10 of this Order. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. If the Department is required to file suit to recover stipulated penalties, the Department will not be foreclosed from seeking civil penalties for violations of this Order or any other provision of law in an amount greater than the stipulated penalties under this paragraph.

14. Respondent shall make all payments required by this Order by cashier's check, City check, money order, or on-line payment. Cashier's check, City check, or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Southwest District, Department of Environmental Protection, 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida, 33637.

16. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

17. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

18. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

19. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

20. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

22. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000 per day per violation, and criminal penalties.

23. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

24. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

25. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

26. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

27. Respondent shall publish the following notice in a newspaper of daily circulation in Pinellas County, Florida. The notice shall be published one time only within 14 days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection (Department) gives notice of agency action of entering into a Consent Order with PINELLAS COUNTY UTILITIES pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharges to ground and/or surface waters from the Pinellas County collection system from September 11, 2017, to September 17, 2017. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Southwest District Office, 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida 33637.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;

- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the Southwest District Office at 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida 33637. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

28. Rules referenced in this Order are available at
<https://soflive.dep.state.fl.us/ogc/ogc/content/rules>.

FOR THE RESPONDENT:



Megan E. Ross, P.E.
Interim Utilities Director
Pinellas County Utilities

02 May 18

Date

DONE AND ORDERED this 4 day of MAY, 2018, in Hillsborough County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Kelley M. Boatewright for:
Mary E. Yeargan, P.G.
District Director
Southwest District

Filed, on this date, pursuant to section 120.52, Fla. Stat., with the designated Department Clerk, receipt
of which is hereby acknowledged.

Rhonda Hughes
Clerk

May 4, 2018
Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit 1

In-Kind Projects

I. Introduction

An in-kind project

a. Within 60 days of the effective date of this Consent Order, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

b. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipt of written notice.

c. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the

Department, Respondent shall make cash payment of the penalties as set forth in the Consent Order above, within 30 days of Department notice.

d. Within 120 days of the effective date of this Consent Order, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, then Respondent shall make cash payment of the civil penalties as set forth in the attached Consent Order, within 30 days of Department notice.

e. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule, Respondent shall complete the entire in-kind project.

f. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

g. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of assessed penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the assessed penalty amount, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

h. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

i. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of the assessed penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the assessed penalty amount, no additional penalties shall be assessed for failure to complete the requirements of this paragraph.